

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

May 9, 2005

IN RE:

**PETITION OF ATMOS ENERGY
CORPORATION FOR APPROVAL OF
FRANCHISE AGREEMENTS WITH
WILLIAMSON COUNTY AND
JOHNSON CITY, TENNESSEE**

**DOCKET NO.
03-00520**

**INITIAL ORDER APPROVING PETITION OF ATMOS ENERGY CORPORATION
FOR APPROVAL OF FRANCHISE AGREEMENTS WITH WILLIAMSON COUNTY
AND JOHNSON CITY, TENNESSEE**

This matter is before the Hearing Officer for consideration of the *Petition of Atmos Energy Corporation for Approval of Franchise Agreements with Williamson County and Johnson City, Tennessee* ("Petition") filed by Atmos Energy Corporation ("Atmos" or "Petitioner") on September 12, 2003. On January 20, 2004, a hearing was held before the Hearing Officer for the purpose of allowing Atmos, Williamson County, Tennessee ("Williamson County" or the "County") and Johnson City, Tennessee ("Johnson City" or the "City") to introduce evidence in support of their request for approval of Atmos' *Petition*, Williamson County's Resolution No. 5-03-3 entering into a license agreement with Atmos for the provision of natural gas service (the "Williamson County Resolution"), and Johnson City's Ordinance No. 3869-03 granting Atmos a franchise to operate its natural gas distribution system within City rights-of-way ("Johnson City Ordinance").

After careful consideration of the *Petition*, the Williamson County Resolution, the Johnson City Ordinance and the entire record in this matter, including testimony from Atmos,

Williamson County and Johnson City, the Hearing Officer approves the *Petition*, the Williamson County Resolution, the Johnson City Ordinance, and the franchises granted to Atmos by Williamson County and Johnson City.

Travel of the Case

Atmos filed the *Petition* on September 12, 2003. Copies of the Williamson County Resolution and the Johnson City Ordinance were attached as exhibits to the *Petition*. In its *Petition* Atmos asks that the franchise agreements embodied in the Williamson County Resolution and corresponding license agreement and the Johnson City Ordinance be approved.

The *Petition* states that the Williamson County Board of Commissioners passed the Williamson County Resolution on May 14, 2003.¹ The *Petition* describes the Williamson County Resolution as an announcement of the Williamson County Board's "intent to enter into a license agreement granting a non-exclusive franchise to Atmos to use the public rights-of-way of Williamson County for the purposes of operating and maintaining a natural gas transmission system."² The *Petition* states that "the license agreement granting the franchise was accepted by Atmos with an effective date of June 4, 2003."³ A copy of the license agreement was also attached to the *Petition*. The *Petition* describes the license agreement as granting Atmos a fifteen (15) year franchise and as assessing a franchise fee of five percent (5%) of Atmos' annual gross revenues from natural gas sales to customers located in unincorporated areas of Williamson County.⁴ The *Petition* states that the license agreement between Williamson County and Atmos supersedes a previous franchise agreement that was due to expire in 2007.⁵

¹ *Petition*, p. 1 (September 12, 2003).

² *Id.*, pp. 1-2.

³ *Id.*, p. 2.

⁴ *Id.*

⁵ *Id.*, p. 3.

The *Petition* also states that Johnson City granted Atmos a franchise to use the public rights-of-way for a natural gas transmission system in 1988.⁶ The *Petition* states that the Johnson City franchise was for a term of twenty-five (25) years, contained a franchise fee of two percent (2%) of the annual gross revenues from Atmos' sales within the City's limits and provided for renegotiation of the franchise fee every five (5) years.⁷ The *Petition* explains that Johnson City and Atmos negotiated an agreement that resulted in a city ordinance passed in 1997 raising the franchise fee from two percent (2%) to three percent (3%) in September 1997 and by one percent (1%) annually thereafter until the franchise fee reached five percent (5%).⁸ The *Petition* states further that Johnson City passed the Johnson City Ordinance on July 17, 2003 superceding all previous franchise ordinances, providing for a three percent (3%) franchise fee, and providing for a term of twenty-five (25) years.⁹

The testimony of Denise Manning, Atmos' Public Affairs Manager, Michael K. West, the City Manager for Johnson City, and Rogers Anderson, the County Mayor for Williamson County was filed on January 16, 2004. Ms. Manning's testimony described the general physical layout and location of the Atmos system located in Williamson County as well as the approximate number and types of customers located in Williamson County.¹⁰ Ms. Manning also testified that Atmos would not be able to adequately operate and maintain its Williamson County system without access to the public rights of way in Williamson County.¹¹

Johnson City Manager Michael West's testimony described the negotiations between Atmos and Johnson City and offered that franchise granted to Atmos as embodied in the Johnson

⁶ *Petition*, p. 2 (September 12, 2003).

⁷ *Id.*

⁸ *Id.*, p. 3.

⁹ *Id.*

¹⁰ *Direct Testimony of Denise Manning*, p. 1 (January 16, 2004).

¹¹ *Id.*

City Ordinance is necessary and proper for the public convenience and properly serves and protects the public interest of the citizens of Johnson City.¹²

The testimony of Williamson County Mayor Rogers Anderson described the negotiations between Atmos and Williamson County and offered that the franchise granted to Atmos as embodied in the Williamson County Resolution is necessary and proper for the public convenience and properly serves and protects the public interest of the citizens of Williamson County.¹³

The testimony of Robert M. Elam, Vice President of Operations for the Southeastern Region for Atmos, was filed on January 20, 2004. In his testimony, Mr. Elam described Atmos' Johnson City system and the nature of the negotiations between Atmos and Johnson City which culminated with the passage of the Johnson City Ordinance.¹⁴ Mr. Elam also testified that the franchise granted to Atmos as embodied in the Johnson City Ordinance is necessary and proper for the public convenience and properly conserves and protects the public interest of the citizens of Johnson City.¹⁵

The January 20, 2004 Hearing

The Hearing on the merits was held on January 20, 2004. Joe A. Conner, Esq., appeared on behalf of Atmos. Jim Epps, Esq., City Attorney for Johnson City, appeared on behalf of Johnson City. Members of the Authority's Energy and Water Division ("Authority Staff") attended and participated in the Hearing. During the Hearing all filings in the docket through the date of the Hearing were made a part of the evidentiary record. Ms. Manning, Mr. West, Mr.

¹² *Direct Testimony of Michael K. West*, p. 2 (January 16, 2004).

¹³ *Direct Testimony of Rogers Anderson*, pp. 1-2 (January 16, 2004).

¹⁴ *Direct Testimony of Robert M. Elam*, p. 3 (January 20, 2004).

¹⁵ *Id.*

Anderson, and Mr. Elam appeared and testified in support of the *Petition*. The witnesses were examined by counsel for the parties and responded to questions from Authority Staff.

Mr. Elam appeared first and affirmed his pre-filed testimony. In response to a question from Authority Staff he testified that the franchise fee authorized by the Johnson City Ordinance will be presented on the bill to each customer as a separate line item.¹⁶ Mr. West appeared next and re-affirmed his pre-filed testimony. Ms. Manning followed, adopting her pre-filed testimony. In response to a question from Authority Staff, Ms. Manning testified that the franchise fee authorized by the Williamson County Resolution represents the first time that a franchise fee has been implemented for the unincorporated areas in Williamson County and that the franchise fee would be presented on the bill to each customer as a separate line item.¹⁷ Mr. Anderson appeared as the last witness and affirmed his pre-filed testimony. Mr. Anderson confirmed that the Williamson County Resolution was passed unanimously by the Williamson County Commission in May of 2003 supporting and granting a franchise to Atmos.¹⁸ In response to a question from the Hearing Officer, he testified that the franchise fee authorized by the Williamson County Resolution represents the first time that a franchise fee has been implemented for the unincorporated areas in Williamson County.¹⁹ Mr. Anderson testified further that there was no public opposition presented during the public deliberation of the Williamson County Resolution before the Williamson County Commission.²⁰ No one intervened in this docket. At the conclusion of the Hearing, the Hearing Officer took the matter under advisement.

¹⁶ Transcript of Proceedings, p. 6 (January 20, 2004).

¹⁷ *Id.*, p. 12.

¹⁸ *Id.*, p. 14.

¹⁹ *Id.*, p. 15.

²⁰ *Id.*

Findings and Conclusions

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”²¹ Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . .”²²

Before a privilege or franchise granted by the State or a political subdivision thereof to a public utility is valid, it must be approved by the Authority, after a hearing and a determination of the public convenience and necessity and the public interest. Notwithstanding such assertions in the *Petition*, and in the testimony of the witnesses in support of the *Petition*, the Authority must still make an independent determination that the public interest is served.

The franchise granted to Atmos, as set forth in the Williamson County Resolution, provides that Atmos will pay a franchise fee of five percent (5%) of the natural gas sales from Atmos customers located within the franchise area granted by Williamson County. The franchise granted to Atmos, as set forth in the Johnson City Ordinance, provides that Atmos will pay a franchise fee of three percent (3%) of the natural gas sales from Atmos customers located within the franchise area granted by Johnson City. Tenn. Code Ann. § 65-4-105(e) provides:

Any franchise payment or other payment for the use of public streets alleys or other public places or any license, privilege, occupation or excise tax payment, which after February 24, 1961, may be made by a utility to a municipality or other political subdivision, except such taxes as are presently

²¹ Tenn. Code Ann. § 65-4-107.

²² *Id.*

provided for under existing statutes and except such franchise payment or other payments as are presently exacted from the utility pursuant to the terms of any existing franchise or other agreement, shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the Authority in fixing the rates and charges of the utility.²³

Although these proposed franchise fees do not appear to be prohibited on the basis of Tenn. Code Ann. § 65-4-105(e) or any other Tennessee statute, the Authority can and should scrutinize these fees under the standards contained in Tenn. Code Ann. § 65-4-107 as a part of the Authority's determination of whether the franchises under consideration in this matter properly conserve the public interest. In the instance of the two franchises under consideration in this matter, the proposed franchise fees are not so excessive as to render the franchises contrary to the public interest.

Atmos, Williamson County, and Johnson City have provided testimony and documentation which demonstrates the beneficial nature of the proposed service to their respective citizens. Atmos has demonstrated a reliable presence in both areas. Williamson County and Johnson City have concluded, as is evidenced by the Williamson County Resolution and the Johnson City Ordinance, that Atmos has the capability and experience to provide natural gas service to their respective citizens. Atmos has demonstrated a reasonable plan for providing natural gas service to the residents of Williamson County and Johnson City and has demonstrated that it has the means and capacity to do so. Atmos' franchise agreements with Williamson County and Johnson City continue longstanding franchise arrangements in communities where Atmos has extensive operations that rely on use of the public rights-of-way. These franchise arrangements, which have not been contested, have been and continue to be of mutual benefit to Atmos, its customers, and these communities and are thus in the public interest.

²³ Tenn. Code Ann. § 65-4-105(e).

Atmos has made a sufficient showing that the franchises granted by Williamson County and Johnson City are necessary and proper for the public convenience and properly conserve the public interest as is required by Tenn. Code Ann. § 65-4-107. Further, Atmos has demonstrated to the Authority that it will comply with all rules and regulations of the Authority, including those rules pertaining to minimum federal safety requirements.

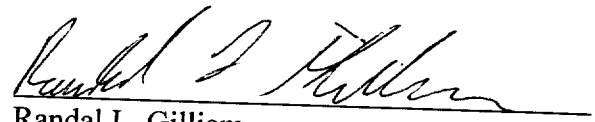
Based on the foregoing findings, the Hearing Officer concludes that the *Petition*, the Williamson County Resolution, the Johnson City Ordinance, and the franchises granted to Atmos by Williamson County and Johnson City are necessary and proper for the public convenience and properly conserve the public interest and should be approved.

IT IS THEREFORE ORDERED THAT:

1. The Resolution of Williamson County (No. 5-03-3) is approved and is incorporated in this Order as if fully rewritten herein.
2. The franchise granted to Atmos Energy Corporation through the License Agreement entered into between Atmos Energy Corporation and Williamson County is approved.
3. The Ordinance of Johnson City (No. 3869-03) is hereby approved and is incorporated in this Order as if fully rewritten herein.
4. The franchise granted to Atmos Energy Corporation by Johnson City is hereby approved.
5. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing officer within fifteen (15) days from the date of this Order.

6. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

7. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer, may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.


Randal L. Gilliam
as Hearing Officer